

FCC MAIL SECTION

JUN 23 1995
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY
 MM Docket No. 95-99

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (Buffalo Gap, Virginia) RM-8612

NOTICE OF PROPOSED RULE MAKING

Adopted: June 15, 1995; Released: June 23, 1995

Comment Date: August 14, 1995
Reply Comment Date: August 29, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by D. J. Broadcasting, Inc. ("D.J. Broadcasting"), licensee of Station WKDE-FM, Channel 288A, Altavista, Virginia, and Ridle Radio, Inc. ("Ridle Radio"), licensee of Station WSKO(FM),¹ Channel 288A, Buffalo Gap, Virginia ("petitioners"), requesting the substitution of Channel 238A for Channel 288A at Buffalo Gap, Virginia, and modification of Station WSKO(FM)'s license to specify operation Channel 288A. D.J. Broadcasting states it will reimburse Ridle Radio for the reasonable costs associated with the change in channel at Buffalo Gap, Virginia and Ridle Radio will file an application to modify its facilities if Channel 238A is allotted.

2. In support of their proposal, petitioners advise that both stations are presently precluded from operation with six kilowatts power on their present channels. Petitioners state that the channel substitution would benefit the public interest by enabling both stations to increase power to six kilowatts and will remove multiple short spacing conflicts.

3. We believe the public interest would be served by proposing the substitution of Channel 238A for Channel 288A at Buffalo Gap, since it could provide both communities with an improved FM service. Channel 238A can be allotted to Buffalo Gap, Virginia, in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station WSKO(FM)'s authorization.² In addition, this proposal is contingent upon Station WBOP(FM), Churchville, Virginia, receiving a license to operate on Channel 292B1 at the site specified in its construction permit.³

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Buffalo Gap, Virginia	288A	238A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this Notice by Certified Mail, Receipt Requested, to: Peter Wayne Lechman, 1790-10 East Market Street, Harrisonburg, Virginia 22801 [permittee of Station WBOP(FM)].

7. Interested parties may file comments on or before **August 14, 1995**, and reply comments on or before **August 29, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

York David Anthony
 Lambert & Anthony, Consulting Engineers
 2613 Craig Avenue
 Concord, North Carolina 28027-4107
 (Consulting Engineer for Petitioners)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. How-

¹ Ridle Radio is now the licensee of Station WSKO(FM), pursuant to the Commission's grant of an application for assignment of license from Tschudy Communications Corporation to Ridle Radio, on December 28, 1994, and which was consummated on February 22, 1995.

² The coordinates for Channel 238A at Buffalo Gap are North Latitude 38-10-55 and West Longitude 79-13-34.

³ The coordinates for Channel 292B1 at Churchville, Virginia, as specified in Station KBOP(FM)'s construction permit are North Latitude 38-12-08 and West Longitude 79-04-34.

ever, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.